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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------------|------------------------|
| 10/593,261 | 07/11/2007 | Lars Michael Larsen | LARSEN 5 | 6440 |
| 1444 7590 04/24/2012 Browdy and Neimark, PLLC 1625 K Street, N.W. Suite 1100 Washington, DC 20006 | | | EXAMINER FAY, ZOHREH A | |
| | | | ART UNIT 1627 | PAPER NUMBER |
| | | | MAIL DATE 04/24/2012 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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APR 24 2012

In re Application of: :
Lars M. Larsen :
Serial No.: 10/593,261 : PETITION DECISION
Filed: July 11, 2007 :
Attorney Docket No.: LARSEN 5 :

This is in response to the petition under 37 CFR § 1.181, filed April 18, 2012, requesting that the final Office action of April 2, 2012 be withdrawn if, in fact, the action was intended to be made final. Applicant has noted some ambiguity due to the fact that Form PTOL-326 indicates the action to be non-final even though the body of the action indicates it to be final.

BACKGROUND

Relevant parts of the prosecution history are summarized below.

The examiner mailed a final Office action on February 15, 2011.

On April 4, 2011, applicant submitted an amendment after final including claim amendments to the claims.

On May 13, 2011, the examiner mailed to applicant an advisory action indicating that the after final amendment would not be entered because new issues were raised.

On June 6, 2011, applicant filed a Request for Continued Examination (RCE) along with the appropriate fees. In this RCE, applicants specifically fulfilled the requirements of 37 C.F.R. § 1.114 (submission) and said submission, containing claim amendments, was to be considered for examination.

The examiner mailed a final Office action on April 2, 2012. It is noted that the PTOL-Form 326 indicates the action to be non-final but the body of the action indicates it to be final.

In response thereto, applicant filed a petition on April 18, 2012 under 37 CFR § 1.181, requesting that the finality of the Office action of April 2, 2012 be withdrawn.

DISCUSSION

The petition and the file history have been carefully considered.

In the petition filed on April 18, 2012, applicant argues that "In response to the February 15, 2011 final rejection, applicant filed an amendment on April 14, 2011. The May 13, 2011 advisory action refused to enter the amendment on the ground that the proposed amendments "raise new issues that would require further consideration and/or search". Consequently, on June 6, 2011, Applicant filed an RCE requesting entry of the April 14 amendment. On page 1 of the RCE, applicant specifically remarked: Since the Advisory Action refused to enter the Amendment on the ground that it raised new issues, the next action cannot be made final. See MPEP 706.07 (h) (VIII) and 706.07(b). In view of the foregoing, the statement "THIS ACTION IS MADE FINAL" came as a rather unpleasant surprise. We respectfully request that the instant rejection be plainly identified as a non-final action. Finality was premature in view of the policies set forth in the cited MPEP provisions."

Applicant's points are well-taken and found persuasive. M.P.E.P. 706.07(b) states:

However, it would not be proper to make final a first Office action in a continuing or substitute application or an RCE where that application contains material which was presented in the earlier application after final rejection or closing of prosecution but was denied entry because (A) new issues were raised that required further consideration and/or search, or (B) the issue of new matter was raised.

It is noted that the claims were substantially amended in the response submitted with the RCE on June 6, 2011. Thus, it is decided that the final Office action mailed on April 2, 2012 is premature and in error because the claims are not drawn to the same invention and a new ground of rejection has been applied. The finality of said rejection is hereby WITHDRAWN in favor of applicant.

DECISION

The petition is **GRANTED**.

The Office action mailed April 2, 2012 is hereby vacated to the extent that it was made "final" and the Office action is now considered to be a non-final Office action.

Should there be any questions about this decision please contact Marianne C. Seidel, by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 703-872-9306.

A handwritten signature in black ink, appearing to read "D. Sullivan", with a stylized flourish at the end.

Daniel Sullivan

Acting Director, Technology Center 1600